



CONFIDENTIAL

VIA ELECTRONIC MAIL

September 12, 2007

Mr. B. Michael Verne  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
7th & Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mike:

I am writing to confirm my understanding of a telephone conversation we had today concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") of a proposed transaction discussed below.

Proposed Transaction

Pursuant to a proposed agreement, the Acquiring Entity will acquire 100% of the issued and outstanding stock of Target, a privately held S corporation. The stock of target consists of one class of voting shares (stock that carries voting rights with regard to the election of directors) and non-voting shares (stock that does not have voting rights with regard to the election of directors). Most of the shares of Target are non-voting shares.

Please assume for purposes of our hypothetical that the Size of the Parties Test is met. While the overall payment being made by Acquiring Entity for the voting and non-voting shares of Target is greater than \$59.8 million (the amount that must be exceeded to meet the HSR Size of the Transaction Test), the part of the payment for the voting shares of Target is cash in an amount well below \$59.8 million. Most of the transaction consideration will be for the non-voting shares of Target. The transaction and the allocation of consideration between voting and non-voting shares has not been structured for purposes related to potential obligations under the HSR Act.

Analysis and Conclusions

You confirmed that the transaction described above is not reportable under the HSR Act as the \$59.8 million Size of the Transaction Test is not met.



[REDACTED]  
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You also confirmed the following regarding the above described transaction:

(1) Any consideration for the non-voting shares of Target is not included in the HSR valuation as the acquisition of non-voting securities is HSR exempt regardless of the value;

(2) The HSR analysis is not impacted by whether a single shareholder currently holds all the voting and non-voting shares of Target, or if multiple shareholders of Target currently hold the voting and/or non-voting shares of Target;

(3) Even though the Acquiring Entity elects to treat the acquisition of the stock of Target as an asset deal for tax purposes under Section 338(h)(10) of the Internal Revenue Service code, this does not change the conclusion that the proposed transaction still is an exempt acquisition of voting and non-voting securities for HSR purposes; and

(4) This transaction will not be regarded as a transaction or device for avoidance under 16 C.F.R. § 801.90.

\* \* \*

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

[REDACTED]

AGREE -  
BV  
9/12/07

[REDACTED]